

109TH CONGRESS
1ST SESSION

S. 1883

To amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to assist property owners and Federal agencies in resolving disputes relating to private property.

IN THE SENATE OF THE UNITED STATES

OCTOBER 18, 2005

Mr. HATCH (for himself and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to assist property owners and Federal agencies in resolving disputes relating to private property.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Empowering More
5 Property Owners With Enhanced Rights Act of 2005” or
6 the “EMPOWER Act”.

7 **SEC. 2. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds that—

1 (1) the Constitution of the United States explic-
2 itly states that “No person shall be . . . deprived of
3 life, liberty, or property, without due process of law;
4 nor shall private property be taken for public use,
5 without just compensation.”;

6 (2) in carrying out activities to promote the
7 general welfare, including public works, the Federal
8 Government affects real property and sometimes dis-
9 places private property owners, small businesses, and
10 family farmers, among others;

11 (3) Congress enacted the Uniform Relocation
12 Assistance and Real Property Acquisition Policies
13 Act of 1970 (42 U.S.C. 4601 et seq.) (referred to
14 in this section as the “Uniform Act”), which applies
15 to all Federal agencies, to provide for uniform and
16 equitable treatment of persons displaced from their
17 homes, businesses, and farms by Federal and feder-
18 ally-assisted programs;

19 (4) Congress designated the Department of
20 Transportation as the lead agency for purposes of
21 carrying out the Uniform Act, and required the De-
22 partment, in coordination with other Federal agen-
23 cies, to issue a rule, establish procedures, and other-
24 wise implement the Uniform Act;

1 (5) private property owners, small businesses,
 2 and family farmers affected by Federal and feder-
 3 ally-assisted programs under which private property
 4 is acquired for public use face a daunting Federal
 5 bureaucracy; and

6 (6) private property owners, small businesses,
 7 and family farmers affected by Federal and feder-
 8 ally-assisted programs would greatly benefit from
 9 the services of an advocate of high position within
 10 the Federal Government to—

11 (A) advocate for the best interests of those
 12 individuals and small businesses;

13 (B) provide property owners with informa-
 14 tion; and

15 (C) assist property owners in every way
 16 practicable to achieve a fair and equitable set-
 17 tlement with minimum cost and disruption.

18 (b) PURPOSES.—The purposes of this Act are—

19 (1) to enhance the rights of property owners,
 20 small businesses, and family farmers affected by
 21 Federal or federally-assisted programs;

22 (2) to establish an advocate for property own-
 23 ers;

24 (3) to provide consistency among Federal law in
 25 effect as of the date of enactment of this Act;

1 (4) to ensure conformity among Federal agen-
2 cies; and

3 (5) to amend the Uniform Act to establish a
4 program, which will apply to all Federal agencies, to
5 enhance the rights of, and provide advocates for, pri-
6 vate property owners, small businesses, and family
7 farmers affected by Federal and federally-assisted
8 programs.

9 **SEC. 3. DEFINITIONS.**

10 Section 101 of the Uniform Relocation Assistance
11 and Real Property Acquisition Policies Act of 1970 (42
12 U.S.C. 4601) is amended by adding at the end the fol-
13 lowing:

14 “(14) PROPERTY RIGHTS.—The term ‘property
15 rights’ means rights associated with characteristics
16 of private real property that—

17 “(A) under relevant case law, have been
18 held to be protected by the Constitution of the
19 United States; or

20 “(B) are created or protected under Fed-
21 eral law (including regulations), or under State
22 law in the State the controversy arises, and
23 case law interpreting that law.”.

1 **SEC. 4. UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES.**
 2

3 Section 301 of the Uniform Relocation Assistance
 4 and Real Property Acquisition Policies Act of 1970 (42
 5 U.S.C. 4651) is amended—

6 (1) by striking the section heading and all that
 7 follows through “SEC. 301. In order” and inserting
 8 the following:

9 **“SEC. 301. UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES.**
 10

11 “(a) IN GENERAL.—In order”;

12 (2) in subsection (a) (as designated by para-
 13 graph (1))—

14 (A) by striking paragraph (1) and insert-
 15 ing the following:

16 “(1) RESPONSIBILITIES OF FEDERAL AGEN-
 17 CIES.—The head of a Federal agency shall—

18 “(A) make every reasonable effort to ac-
 19 quire real property expeditiously by negotiation;

20 “(B) at the beginning of the negotiation
 21 process, advise each property owner involved in
 22 the negotiation, in writing, of the name and
 23 current contact information for the Office of
 24 the Property Rights Ombudsperson established
 25 by subsection (b) (or any other property rights
 26 Ombudsperson appointed under subsection (b))

that is available to assist the property owner in understanding, and resolving any disputes arising from, the acquisition process; and

“(C) provide to the property owner a description of the property rights of the property owner, including a description of available mediation and other dispute resolution alternatives.”; and

(B) in paragraph (3), by adding at the end the following: “In a case in which property to be acquired includes a residential or recreational lot, a residential structure containing 12 or fewer dwelling units, a family farmer (as defined in section 101 of title 11, United States Code) or a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), if requested by the property owner, the head of the Federal agency shall provide to the property owner a copy of the appraisal used to establish the value of the property for negotiating purposes.”; and

(3) by adding at the end the following:

“(b) OFFICE OF PROPERTY RIGHTS

OMBUDSPERSON.—

“(1) DEFINITIONS.—In this subsection:

1 “(A) OFFICE.—The term ‘Office’ means
2 the Office of the Property Rights
3 Ombudsperson established by paragraph (2)(A).

4 “(B) OMBUDSPERSON.—The term
5 ‘Ombudsperson’ means the Property Rights
6 Ombudsperson appointed under paragraph
7 (2)(B).

8 “(2) ESTABLISHMENT.—

9 “(A) IN GENERAL.—There is established
10 within the lead agency the Office of the Prop-
11 erty Rights Ombudsperson.

12 “(B) APPOINTMENT OF HEAD OF OF-
13 FICE.—The Secretary of Transportation shall
14 appoint as Property Rights Ombudsperson an
15 attorney with a background or expertise in law
16 relating to eminent domain and the taking of
17 private property.

18 “(C) SUPERVISION AND ACCOUNT-
19 ABILITY.—The Ombudsperson shall report di-
20 rectly to the President.

21 “(D) STAFF.—The Secretary of Transpor-
22 tation may hire such personnel as are necessary
23 to assist the Ombudsperson in carrying out the
24 duties of the Ombudsperson.

25 “(3) DUTIES.—The Ombudsperson shall—

1 “(A) develop and maintain expertise in and
2 understanding of the law relating to property
3 rights;

4 “(B) at the request of a Federal agency or
5 a State agency, advise the agency with respect
6 to actions that may affect property rights;

7 “(C) advise private property owners that
8 have a legitimate potential or actual claim
9 against a Federal agency involving property
10 rights;

11 “(D) identify Federal agency actions that
12 have potential property rights implications and,
13 if appropriate, advise the relevant Federal agen-
14 cies with respect to those implications;

15 “(E) provide information to private citi-
16 zens, civic groups, Federal agencies, State
17 agencies, and other interested parties regarding
18 the rights of those parties under this Act; and

19 “(F) if appropriate, and if requested to do
20 so by a private property owner, mediate or ar-
21 range arbitration (including the appointment of
22 1 or more arbitrators in accordance with para-
23 graph (4)(C)) for disputes between private
24 property owners and Federal agencies that in-
25 volve—

- 1 “(i) property rights;
- 2 “(ii) eminent domain; or
- 3 “(iii) relocation assistance under this
- 4 Act.

5 “(4) ARBITRATION AND MEDIATION.—

6 “(A) PARTICIPATION.—If arbitration or
 7 mediation is requested by a private property
 8 owner under paragraph (3)(F) and arranged by
 9 the Ombudsperson, a Federal agency shall par-
 10 ticipate in the mediation or arbitration as if the
 11 matter were ordered to mediation or arbitration
 12 by a court of competent jurisdiction.

13 “(B) PROCEDURES.—In conducting or ar-
 14 ranging for arbitration under paragraph (3)(F),
 15 the Ombudsperson shall follow any applicable
 16 procedure or requirement under chapter I of
 17 title 9, United States Code.

18 “(C) APPOINTMENT OF ARBITRATOR.—

19 “(i) IN GENERAL.—In selecting an in-
 20 dividual to arbitrate a dispute, the
 21 Ombudsperson shall appoint an inde-
 22 pendent arbitrator who is acceptable to
 23 each party involved in the dispute.

24 “(ii) DISAGREEMENT OVER ARBI-
 25 TRATOR.—If a party to a dispute objects

1 to the appointment of an arbitrator se-
 2 lected by the Ombudsperson, and that
 3 party is willing to pay for the services of
 4 another arbitrator that is acceptable to the
 5 Ombudsperson, the other arbitrator shall
 6 arbitrate the dispute at the expense of the
 7 party that objected to the original arbi-
 8 trator.

9 “(iii) OMBUDSPERSON AS ARBI-
 10 TRATOR.—With the agreement of each
 11 party to a dispute, the Ombudsperson may
 12 act as the arbitrator for the dispute.

13 “(iv) PANEL OF ARBITRATORS.—The
 14 Ombudsperson may, on the initiative of the
 15 Ombudsperson or upon agreement of each
 16 party to a dispute, appoint a panel of arbi-
 17 trators to conduct the arbitration for the
 18 dispute.

19 “(D) TREATMENT OF MATTER SUBJECT
 20 TO ARBITRATION.—Subject to chapter I of title
 21 9, United States Code, the arbitrator and par-
 22 ties involved shall treat the matter being arbi-
 23 trated as if—

1 “(i) the matter were ordered to arbi-
 2 tration by a court of competent jurisdic-
 3 tion; and

4 “(ii) the arbitrator or panel of arbi-
 5 trators appointed by the Ombudsperson in
 6 accordance with this subsection were ap-
 7 pointed by the court.

8 “(E) DECLINATION TO ARRANGE ARBITRA-
 9 TION.—If a property owner requests that the
 10 Ombudsperson arrange arbitration in a matter,
 11 the Ombudsperson shall issue a written state-
 12 ment declining to arrange the arbitration if, as
 13 determined by the Ombudsperson—

14 “(i) the issues in dispute are not ripe
 15 for review;

16 “(ii) assuming the alleged facts are
 17 true, no cause of action exists under any
 18 Federal or State law;

19 “(iii) all issues in dispute are beyond
 20 the scope of the statutory duty of the
 21 Ombudsperson to review; or

22 “(iv) arbitration is otherwise not ap-
 23 propriate.

24 “(5) APPLICABLE AUTHORITY.—In conducting
 25 an arbitration, the arbitrator shall apply all relevant

1 Federal and State laws (including regulations and
2 case law), as determined by the arbitrator.

3 “(6) FINAL DECISION AND REVIEW.—

4 “(A) IN GENERAL.—Not later than 30
5 days after the date on which the arbitrator
6 issues a final decision for a dispute, any party
7 to the dispute may submit the final decision
8 and award, or any issue upon which the award
9 is based, to the appropriate United States dis-
10 trict court for de novo review.

11 “(B) BINDING ARBITRATION.—A property
12 owner and a Federal or State government enti-
13 ty that are parties to a dispute may agree
14 that—

15 “(i) the arbitration shall be binding;

16 and

17 “(ii) no de novo review may occur
18 after issuance of the final decision of the
19 arbitrator.

20 “(C) NO ARBITRATION NECESSARY.—

21 “(i) IN GENERAL.—Arbitration by or
22 through the Ombudsperson shall not be re-
23 quired before a party to any potential arbi-
24 tration may bring a civil action in the ap-

1 appropriate court of jurisdiction to adjudicate
2 a claim.

3 “(ii) NO FAILURE TO EXHAUST REM-
4 EDIES.—The lack of arbitration by or
5 through the Ombudsperson shall not be
6 considered to be—

7 “(I) a failure to exhaust available
8 administrative remedies; or

9 “(II) a bar to bringing a civil ac-
10 tion described in clause (i).

11 “(7) ROLE OF OMBUDSPERSON IN JUDICIAL
12 PROCEEDINGS.—

13 “(A) IN GENERAL.—The Ombudsperson
14 may not be compelled to testify in a civil action
15 filed with regard to the subject matter of any
16 review or arbitration conducted by the
17 Ombudsperson.

18 “(B) WORK PRODUCTS OF
19 OMBUDSPERSON.—The written work products
20 of the Ombudsperson, including notes, opinions,
21 and conclusions of the Ombudsperson, shall not
22 be admissible in any civil action relating to an
23 issue with respect to which the Ombudsperson
24 provided advice to any party involved in the
25 civil action.

1 “(C) REPRESENTATION.—The
 2 Ombudsperson may not represent a private
 3 property owner, State agency, or local govern-
 4 ment in any administrative or judicial pro-
 5 ceeding.

6 “(8) EMINENT DOMAIN PROCEEDINGS.—

7 “(A) NO EFFECT ON OCCUPANCY PRO-
 8 CEEDING.—No dispute submitted to the
 9 Ombudsperson under this section shall bar or
 10 stay any action in an eminent domain pro-
 11 ceeding for occupancy of premises.

12 “(B) STANDING.—

13 “(i) IN GENERAL.—Subject to clause
 14 (ii), the Ombudsperson, or a mediator or
 15 arbitrator acting at the request of a prop-
 16 erty owner under this subsection, shall
 17 have standing, in an eminent domain pro-
 18 ceeding filed in United States district court
 19 by a Federal agency or a State agency, to
 20 file with the court a motion to stay the
 21 proceeding during the pendency of the me-
 22 diation or arbitration.

23 “(ii) NECESSITY OF STAY.—The
 24 Ombudsperson, or a mediator or arbitrator
 25 described in clause (i), may not file a mo-

tion to stay an eminent domain proceeding described in clause (i) unless the Ombudsperson, mediator, or arbitrator certifies at the time of filing of the motion that the stay is reasonably necessary to reach a resolution of the matter through mediation or arbitration.

“(iii) DURATION OF STAY.—If a stay of an eminent domain proceeding is granted under this subparagraph, and the order granting the stay does not specify the date on which the stay terminates, the Ombudsperson, mediator, or arbitrator that filed the motion for the stay shall file with the appropriate United States district court a motion to terminate the stay by not later than the date that is 30 days after—

“(I) the date of resolution of the matter through mediation;

“(II) the date of issuance of a final decision on, or award for, the matter through arbitration; or

“(III) the date on which the Ombudsperson, mediator, or arbi-

1 trator determines that mediation or
2 arbitration of the matter is not appro-
3 priate.

4 “(9) APPRAISAL.—

5 “(A) REQUEST FOR ADDITIONAL AP-
6 PRAISAL.—A private property owner or dis-
7 placed person may request that the
8 Ombudsperson, mediator, or arbitrator author-
9 ize the conduct of an additional appraisal of the
10 value of the property that is the subject of the
11 mediation or arbitration.

12 “(B) CONDUCT OF AND PAYMENT FOR AP-
13 PRAISAL.—If the Ombudsperson, mediator, or
14 arbitrator determines that the conduct of an
15 additional appraisal under subparagraph (A) is
16 reasonably necessary to reach a resolution of
17 the matter being mediated or arbitrated, the
18 Ombudsperson, or mediator, or arbitrator
19 may—

20 “(i) provide for the conduct of an ad-
21 ditional appraisal of the property by an
22 independent appraiser; and

23 “(ii) require the Federal agency that
24 is a party to the mediation or arbitration
25 to pay the costs of conducting the first ad-

1 ditional appraisal ordered under this para-
2 graph.

3 “(10) OTHER OFFICES OF OMBUDSPERSONS.—

4 “(A) FEDERAL OFFICES.—Each Federal
5 agency may establish an office of property
6 rights ombudsperson within the Federal agency
7 to comply with paragraph (1), and to carry out
8 other duties and responsibilities of the
9 Ombudsperson under this subsection, if the
10 Federal agency establishes the office in accord-
11 ance with regulations that are promulgated to
12 implement this subsection.

13 “(B) USE OF STATE OFFICES.—If a State
14 establishes an office of property rights
15 ombudsperson in accordance with regulations
16 that are promulgated to implement this sub-
17 section, a Federal agency, with the approval of
18 the State, may use that State office—

19 “(i) to comply with paragraph (1);
20 and

21 “(ii) to carry out the duties and re-
22 sponsibilities of the Ombudsperson under
23 this subsection.

24 “(C) NO FEDERAL OR STATE OFFICES.—If
25 a Federal agency does not establish an office of

property rights ombudsperson described in subparagraph (A) and is involved in the use of eminent domain power, relocation issues, or a property rights dispute in a State that does not establish an office of property rights ombudsperson described in subparagraph (B), the Federal agency shall use the services of the Ombudsperson—

“(i) to comply with paragraph (1);

and

“(ii) to carry out the duties and responsibilities of the Ombudsperson under this subsection.”.

**SEC. 5. REQUIREMENTS FOR UNIFORM LAND ACQUISITION
POLICIES; PAYMENTS OF EXPENSES INCIDENTAL TO TRANSFER OF REAL PROPERTY
TO STATE; PAYMENT OF LITIGATION EXPENSES IN CERTAIN CASES.**

Section 305(a)(1) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4655(a)(1)) is amended by inserting “(including through the appointment of a property rights Ombudsperson in accordance with regulations promulgated to carry out this title)” after “section 301”.

○